83-1041

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1983

J.T. TAYLOR, JR.,
ZACHARY TAYLOR,
GORDON H. DENTON,
and
L.J. MOORE,
Appellants,

v.

STATE OF NORTH CAROLINA,
Appellee.

APPEAL FROM THE
NORTH CAROLINA COURT OF APPEALS
THREE B DIVISION

JURISDICTIONAL STATEMENT

WILLIAM WOODWARD WEBB
Broughton, Wilkins & Webb, P.A.
P.O. Box 2387
Raleigh, North Carolina 27602
(919) 833-2752
Counsel of Record for the
Appellants

QUESTION PRESENTED UPON APPEAL

Does N.C. Gen. Stat. § 146-79, which provides that, in all suits involving title to land in which the State of North Carolina is a party, title to the land in question is presumed to be in the State, violate the due process clause of the fourteenth amendment to the United States Constitution, both on its face and as applied in this case?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED UPON APPEAL	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.	iii
OPINIONS BELOW.	1
JURISDICTION.	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED. .	3
STATEMENT OF THE CASE	4
REASON FOR PLENARY CONSIDERATION	
THE DECISION OF THE NORTH CAROLINA COURT OF APPEALS UPHOLDS A STATE STATUTE THAT VIOLATES THE FEDERAL DUE PROCESS RIGHTS OF THE APPELLANTS AND ALL OTHER SIMILARLY SITUATED LANDOWNERS IN NORTH CAROLINA	10
CONCLUSION	30
CERTIFICATE OF SERVICE. . . .	31
APPENDIX.	A-1

TABLE OF AUTHORITIES

	Page
Cases:	
Bandini Petroleum Co. v. Superior Court, 284 U.S. 8 (1931)	14
Leary v. United States, 395 U.S. 6 (1969)	14,15
Mobile, J.&K.C. Railroad v. Turnipseed, 219 U.S. 35 (1910).	13,20
Robertson v. State Highway Commission, 148 Mont. 275, 420 P.2d 21 (1966).	24
Short Beach Cottage Owners Improvement Association v. Town of Stratford, 154 Conn. 194, 224 A.2d 532 (1966).	23-24
Speiser v. Randall, 357 U.S. 513 (1958).	28
Stanley v. Illinois, 405 U.S. 645 (1972).	14
State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971)	12,17-19, 22-24
State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255 (1976). .	12

TABLE OF AUTHORITIES, continued

Cases, continued

	Page
State v. Phillips, 305 A.2d 644 (Del. Ch. 1973), aff'd, 330 A.2d 136 (Del. 1974)	24
State v. Taylor, ___ N.C. ___, 300 S.E.2d 42 (1983)	passim
Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976)	12
Tot v. United States, 319 U.S. 463 (1943)	14
Trustees of Schools of Township No. 8 v. Lilly, 373 Ill. 431, 26 N.E.2d 489 (1940)	24
United States Department of Agriculture v. Murry, 413 U.S. 508 (1973)	14,15
Constitutional Provisions and Statutes:	
U.S. Const. amend. XIV.	passim
N.C. Gen. Stat. § 146-79 (1983)	passim
28 U.S.C. § 1257(2) (1976)	3

OPINIONS BELOW

The judgment of the Superior Court in and for Craven County, North Carolina, dated August 26, 1981, is unreported and is reproduced in the Appendix at A-3 to A-17 . The opinion of the North Carolina Court of Appeals, Three B Division, dated February 15, 1983, is reported at ___ N.C. App. ___ , 300 S.E.2d 42 (1983), and also is included in the Appendix at A-18 to A-32 . The order of the Supreme Court of North Carolina dismissing the appeal and denying discretionary review, dated June 2, 1983, is set forth in the Appendix at A-33 to A-36. The order of the Supreme Court of North Carolina denying a motion for reconsideration, dated

September 27, 1983, appears in the Appendix at A-37 to A-38 .

JURISDICTION

The judgment of the North Carolina Court of Appeals, Three B Division, affirming the North Carolina Superior Court's holding that N.C. Gen. Stat. § 146-79 was constitutional, was entered on February 15, 1983. On June 2, 1983, the Supreme Court of North Carolina dismissed an appeal and denied discretionary review of the case. Thereafter, on September 27, 1983, the Supreme Court of North Carolina denied a motion for reconsideration. A notice of appeal to the United States Supreme Court was filed with the North Carolina Court of Appeals on December 19, 1983. This

Jurisdictional Statement was timely filed. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(2) (1976).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. XIV, § 1:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

N.C. Gen. Stat. § 146-79 (1983):

> In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until

the other party shall show that he has a good and valid title to such lands in himself.

STATEMENT OF THE CASE

This appeal asks this Court to consider whether a North Carolina statute, N.C. Gen. Stat. § 146-79, which provides that in all suits involving title to land in which the State of North Carolina is a party, title to the land in question is presumed to be in the State, violates the due process clause of the fourteenth amendment to the United States Constitution, both on its face and as applied in this case. The North Carolina Court of Appeals upheld the constitutionality of the statute, and the Supreme Court of North Carolina

declined to review the question.

On March 28, 1978, the appellee STATE OF NORTH CAROLINA (the State) instituted an action in the North Carolina Superior Court in and for Craven County against the appellants J.T. TAYLOR, JR., ZACHARY TAYLOR, and GORDON H. DENTON (the Taylor group) to remove a cloud on title to certain land in Craven County, to restrain trespass and timber removal, and to recover damages for timber wrongfully removed. Upon motion by the Taylor group, the court joined as defendants the appellant L.J. MOORE, Boy's Ranch Foundation, Alice S. Heath, Clifford Earl Heath, and the minor Donna Karen Heath. Subsequently, the court allowed Larry J.

Heath to intervene and align himself with the other Heaths. The court later dismissed another intervenor, Floyd White, and Boy's Ranch Foundation from the case.

Each group of defendants filed answers alleging exclusive ownership of the land in question. The Taylor group and L.J. Moore also raised as a defense the unconstitutionality of N.C. Gen. Stat. § 146-79 under the due process clause of the fourteenth amendment to the United States Constitution. The court denied this defense by order entered June 28, 1980, to which the Taylor group and L.J. Moore took exception and gave notice of appeal.

The court severed the issues of title and damages for separate trial.

At trial before a jury on the issue of title, the State presented the testimony of Robert T. Newcomb, a surveyor, who surveyed the land in question and described monuments he found and those he placed on the ground. He also testified concerning an aerial photograph he prepared and a survey map delineating the boundaries of the land. On cross-examination, he testified that the land was located within the boundaries of Land Grant No. 819, issued by the State to one David Allison in 1795.

At the close of evidence offered by the Taylor group, the Heath group, and L.J. Moore, the State, relying on the presumption created by § 146-79, moved for a directed verdict. Concluding that none of the defendants had "salvaged a lawful

title" and that "there is not a jury verdict arising on this evidence," the court granted the State's motion and entered judgment declaring the State to be the fee simple owner of the 2,705.0254-acre tract. See A-7 to A-15.

On appeal brought by all defendants, the North Carolina Court of Appeals, Three B Division, first held that the presumption created by § 146-79 was constitutional. In the court's view, the presumption was reasonable because title to all land in North Carolina, except that previously granted by the Crown, originated from the State, and the State possessed ultimate title to the soil. In addition, although none of the defendants had challenged the statute on this ground, the court

stated that § 146-79 did not authorize a "taking" of property without just compensation. See A-23-24. Having established the validity of § 146-79, the court then reviewed the evidence and concluded that none of the defendants had good title to the land because none could trace title with sufficient specificity back to a grant from the State. Because none of the defendants had established title satisfactorily, the presumption of § 146-79 operated to vest title in the State. See A-25 to A-32.

The defendants appealed the decision to the Supreme Court of North Carolina, raising the constitutional issue, but the court declined to review the case. See A-33 to A-38. Having filed a Notice of Appeal with the North Carolina Court of Appeals on December 19,

1983, the appellants J.T. TAYLOR, JR., ZACHARY TAYLOR, GORDON H. DENTON, and L.J. MOORE now request this honorable Court to review the constitutional issue. This Jurisdictional Statement was timely filed.

REASON FOR PLENARY CONSIDERATION

THE DECISION OF THE NORTH CAROLINA COURT OF APPEALS UPHOLDS A STATE STATUTE THAT VIOLATES THE FEDERAL DUE PROCESS RIGHTS OF THE APPELLANTS AND ALL OTHER SIMILARLY SITUATED LANDOWNERS IN NORTH CAROLINA.

The decision of the North Carolina Court of Appeals in State v. Taylor, ___ N.C. App. ___, 300 S.E.2d 42 (1983), reproduced at A-18 to A-32. upheld a state statute, N.C. Gen. Stat. § 146-79 (1983), that violates the federal due process rights of the appellants J.T. TAYLOR, JR., ZACHARY

TAYLOR, and GORDON H. DENTON (the Taylor group) and appellant L.J. MOORE, as well as all other similarly situated landowners in North Carolina. The statute provides in pertinent part:

> In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

As interpreted by the North Carolina courts, this provision requires a party, in order to overcome the presumption of title in the State, to trace his title with specificity all the way back to a grant from the

State or Crown. E.g., Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567, 578 (1976); State v. Brooks, 279 N.C. 45, 181 S.E.2d 553, 557-58 (1971); State v. Taylor, supra, 300 S.E.2d at 44-45 [A-]; State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255, 256 (1976). This provision is unconstitutional, both on its face and as applied in this case, because the presumption it creates deprives persons with colorable title to land in North Carolina of their property interests without due process of law in contravention of the fourteenth amendment to the United States Constitution.

The statute is facially unconstitutional because the presumption it creates is patently unreasonable. Early in the century, this Court held in

Mobile, J.&K.C. Railroad v. Turnipseed, 219 U.S. 35 (1910), a civil case, that a rational connection must exist between the fact proved and the fact presumed in order for a statutory presumption to withstand a due process challenge. In the words of this Court:

> That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law . . ., it is essential that there be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.

Id. at 43. The Court consistently has applied this test in both civil and

criminal cases involving statutory presumptions. See, e.g. United States Department of Agriculture v. Murry, 413 U.S. 508, 514 (1973); Stanley v. Illinois, 405 U.S. 645, 658 (1972); Leary v. United States, 395 U.S. 6, 36 (1969); Tot v. United States, 319 U.S. 463, 467 (1943); Bandini Petroleum Co. v. Superior Court, 284 U.S. 8, 19 (1931). For example, in United States Department of Agriculture v. Murry, the plaintiff challenged on due process grounds a section of the Food Stamp Act, 7 U.S.C. § 2014(b), that made ineligible for food stamps any household that included a person under eighteen who had been claimed as a dependent child for federal income tax purposes in the preceding year by

a taxpayer who was not a member of an eligible household. This Court invalidated the statute because the presumed fact, that the child was not presently indigent, did not rationally follow from the proven fact, that a taxpayer had declared the child as a dependent on his tax return for the prior year. 413 U.S. at 514. Similarly, in Leary v. United States, the court invalidated a criminal statute authorizing a jury to infer from a defendant's simple possession of marijuana the fact that the defendant knew the marijuana was illegally imported, because no rational connection existed between the two facts. 395 U.S. at 37-39.

Under these precedents, the presumption created by N.C. Gen. Stat. § 146-79 is unconstitutional because

the presumed fact, that the State holds title to disputed lands, does not rationally follow from the proven fact, that the State is a party to a controversy or suit in which title to land is at issue. No rational connection whatsoever exists between the two facts. Even if the underlying fact from which the presumption flows is that title to all lands in North Carolina originated in the State, no rational nexus exists between that fact and the presumption that the State still holds title to disputed lands some two hundred years later. In point of fact, the State may not be able to demonstrate title superior to that of any other claimant.

As the law presently stands, the State can sue any owner or occupier of land in North Carolina and, relying on the statutory presumption, force the defendant to give up his land if he cannot prove a chain of title extending back to a grant from the State. The presumption operates particularly harshly on private landowners because of the special problems of proof presented by vague or loose descriptions of the boundaries of tracts of land, which are common in eighteenth and nineteenth century deeds or conveyances. For example, in State v. Brooks, supra, one of the private landowners based his claim upon a grant from the State to one William Gause, a subsequent deed from William Gause to Samuel Gause,

and a later deed from Samuel Gause to William Tilly. The Gause and Tilly deeds described the land as "200 acres of the land granted on April 9, 1770, to William Gause." Because the land was not described with the specificity required by modern courts, the court in Brooks held that the Gause and Tilly conveyances were void. Thus the private party's chain of title was broken, and the State gained title to the land by operation of the presumption of § 146-79, despite the uncontroverted evidence of the State's having parted with title in 1770. 181 S.E.2d at 557-58. Because vague and uncertain descriptions of land are so common to earlier deeds and testamentary provisions, the State can utilize the pre-

sumption of § 146-79 to acquire the land of almost any private party in North Carolina, just as it did in Brooks.

The statutory presumption also operates unreasonably in situations involving adverse possession. For example, if A sued B over the ownership of Blackacre, and A proved perfect record title by mesne conveyances from the State while B proved title by twenty-six years of adverse possession against A, B would win the dispute and hold valid legal title to Blackacre. If the State brought suit against B two years later, however, B would not be able to defeat the presumption of § 146-79 because he could not prove a chain of title from the State with which he could connect himself. Neither would he be able to claim

by adverse possession against the State, because he had not possessed the property for thirty years, as is required to defeat the State's title by adverse possession. Thus the statutory presumption would cause B to lose his valid title to the land, despite clear evidence that the State had parted with its title earlier.

These examples demonstrate the unreasonableness of the presumption of title in the State created by § 146-79. Because the presumed fact is not rationally connected with the proven fact, i.e., that the State is a party to the lawsuit or, in the alternative, that the State originally held title to all land in North Carolina, the statute is invalid under the standard set forth in Turnipseed. For this

reason, the statute is unconstitutional on its face as a denial of due process of law.

In addition, the statute is unconstitutional as applied by the North Carolina Court of Appeals in this case. The State's own witness testified that the land in question was located within the boundaries of Land Grant No. 819, conveyed by the State in 1795 to one David Allison. Evidence was also presented demonstrating that on December 10, 1908, the Allison heirs and the State Board of Education executed a trust deed to George H. Roberts, Trustee, in settlement of a dispute between the Allison heirs and the State. Thus no question exists in this case that, as early as 1795, the State parted with title to the land. Application of the

statutory presumption of title in the face of evidence to the contrary is manifestly unreasonable. No rational reason exists to presume that the State still holds title to the land when the evidence conclusively demonstrates that the State parted with its title 188 years ago.

In State v. Brooks, supra, the evidence demonstrated a land grant from the State, but the private party was unable to connect his chain of title to the grant. Despite the evidence of the State's conveyance of title, the court held that the statutory presumption of § 146-79 nevertheless applied to defeat the private party's claim because, "[i]f G.S. 146-79 were interpreted otherwise, title to the subject land, under the circumstances

of this case, would be in limbo. Presumably this statutory provision was enacted to avoid such an undesirable and chaotic result." 181 S.E.2d at 560. Contrary to the court's conclusion, title to disputed lands would not be "in limbo" without the statutory presumption. If the State were required to prove superior title just as any other party, and failed to do so, then title would rest in whichever party to the dispute was able to demonstrate the best title. Other jurisdictions have required the state as plaintiff to prove superior title to land just as a private plaintiff must, and chaos in land ownership has not resulted. See, e.g., Short Beach Cottage Owners Improvement Association v. Town of

Stratford, 154 Conn. 194, 224 A.2d 532 (1966); State v. Phillips, 305 A.2d 644 (Del. Ch. 1973), aff'd, 330 A.2d 136 (Del. 1974); Trustees of Schools of Township No. 8 v. Lilly, 373 Ill. 431, 26 N.E.2d 489 (1940); Robertson v. State Highway Commission, 148 Mont. 275, 420 P.2d 21 (19).

The statutory presumption also operates unreasonably in this case because it places an unduly harsh burden of proof upon the Taylor group. As discussed supra, vague and uncertain descriptions of boundaries of tracts of land are common in eighteenth and nineteenth century deeds and testamentary provisions, and such descriptions generally do not withstand modern proof requirements. See State v. Brooks, supra.

The State can take advantage of this situation to gain title to land, by virtue of § 146-79, whenever a vague description appears in a private party's chain of title. This case presents such a situation. The Taylor group claimed the land in question under the following chain of title:

1. Grant No. 819 from the State of North Carolina to David Allison in 1795.
2. David Allison's death without having disposed of the lands described in Grant No. 819.
3. Trust deed dated 10 December 1908 from the Allison heirs and State Board of Education to George H. Roberts, Trustee. This deed was executed in settlement of a dispute between the Allison heirs and the State.

4. Recorded deed from Florence E. Phipps (an Allison heir) to E.S. English dated 1 January 1967.
5. Special Partition Proceeding No. N-1-232.
6. Recorded deed from Bernard B. Hollowell, Commissioner to E.S. English dated 17 November 1967.
7. Recorded deed from E.S. English to G.H. Denton dated 13 December 1967.
8. Recorded deed from G.H. Denton to Zachary Taylor dated 24 June 1968.
9. Adverse possession by the defendants Taylor and Denton.

See A-24-25. Because, in the court's view, the deed from the Allison heirs did not describe the land with sufficient specificity, the court held that the Taylor group's chain of title was broken, and the State was entitled to

the land by virtue of § 146-79 despite the undisputed evidence that the State had parted with its title in 1795. See A-26-27.

Because the presumption of § 146-79, when applied in a case in which the evidence demonstrates a grant from the State, is without any rational basis, the presumption deprives the private parties to the land dispute of their property interests without due process of law. In light of the evidence in this case demonstrating a grant from the State to a private person in 1795, the court's application of the statutory presumption impermissibly infringed the appellants' federal due process rights. Thus the statute is unconstitutional as applied in this case.

The importance of a statutory presumption to the outcome of a lawsuit cannot be understated. As this Court observed in Speiser v. Randall, 357 U.S. 513, 520 (1958):

> To experienced lawyers it is commonplace that the outcome of a lawsuit—and hence the vindication of legal rights—depends more often on how the factfinder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied.

Because the presumption created by § 146-79 so seriously jeopardizes the property rights of the appellants

J.T. TAYLOR, JR., ZACHARY TAYLOR, GORDON H. DENTON, and L.J. MOORE, as well as all other similarly situated landowners in North Carolina, this honorable Court should grant this appeal to resolve this important matter.

CONCLUSION

For the foregoing reasons, the appellants J.T. TAYLOR, Jr., ZACHARY TAYLOR, GORDON H. DENTON, and L.J. MOORE respectfully request this Court to grant plenary review of the decision of the North Carolina Court of Appeals, Three B Division.

Respectfully submitted,

J.T. TAYLOR, JR., ZACHARY TAYLOR, GORDON H. DENTON, and L.J. MOORE,
Defendants-Appellants,

By: _____

WILLIAM WOODWARD WEBB
BROUGHTON, WILKINS & WEBB, P.A.
19th Floor, Century Plaza Building
Fayetteville Street Mall
P.O. Box 2387
Raleigh,
North Carolina 27602
(919) 833-2752
Counsel of Record for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of December 1983 mailed three copies of the foregoing jurisdictional statement, first class postage prepaid, to:

T. BUIE COSTEN
SPECIAL DEPUTY ATTORNEY GENERAL
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Attorney for Plaintiff-Appellee
State of North Carolina.

WILLIAM WOODWARD WEBB
BROUGHTON, WILKINS & WEBB, P.A.
19th Floor, Century Plaza Building
Fayetteville Street Mall
P.O. Box 2387
Raleigh,
North Carolina 27602
(919) 833-2752
Counsel of Record for Appellants

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1983

J.T. TAYLOR, JR.,
ZACHARY TAYLOR,
GORDON H. DENTON,
and
L.J. MOORE,
Appellants,

v.

STATE OF NORTH CAROLINA,
Appellee.

APPEAL FROM THE
NORTH CAROLINA COURT OF APPEALS
THREE B DIVISION

APPENDIX

WILLIAM WOODWARD WEBB
Broughton, Wilkins & Webb, P.A.
P.O. Box 2387
Raleigh, North Carolina 27602
(919) 833-2752
Counsel of the Appellants

TABLE OF CONTENTS

Page

Judgment of the Superior Court in and for Craven County, North Carolina, dated August 26, 1981 . . . . . .

Judgment and Opinion of the North Carolina Court of Appeals, Three B Division, dated February 15, 1983 . . . . . .

Order of the Supreme Court of North Carolina Dismissing Appeal and Denying Discretionary Review, dated June 2, 1983 . . . . . .

Order of the Supreme Court of North Carolina Denying Reconsideration, dated September 27, 1983 . . . .

Notice of Appeal to the United States Supreme Court, filed with the North Carolina Court of Appeals December 19, 1983 . . . . .

JUDGMENT (Filed Aug. 26, 1981)

STATE OF NORTH CAROLINA
COUNTY OF CRAVEN

STATE OF NORTH CAROLINA, Plaintiff vs. J. T. TAYLOR, JR., ZACHARY TAYLOR, and GORDON H. DENTON, Defendants and L. J. MOORE, BOY'S RANCH FOUNDATION ALICE S. HEATH, CLIFFORD EARL HEATH, and DONNA KAREN HEATH (Minor), Additional Defendants and SAMUEL L. WHITEHURST, JR., Guardian Ad Litem, for DONNA KAREN HEATH, (Minor), Additional Defendants and FLOYD D. WHITE, Intervenor Defendant and LARRY T. HEATH, Intervenor Defendant	NO. 78CVS280
AND	
L. J. MOORE, Cross Complainant & Third Party Plaintiff vs. STATE OF NORTH CAROLINA, Plaintiff & Third Party Defendant and J. T. TAYLOR, JR., ZACHARY TAYLOR, and GORDON H. DENTON, and ALICE S. HEATH, CLIFFORD EARL HEATH, and DONNA KAREN HEATH (Minor) and FLOYD D. WHITE, Third Party Defendants	
AND	

LARRY T. HEATH, Cross Complainant & Third Party Plaintiff vs. STATE OF NORTH CAROLINA, Plaintiff & Third Party Defendant and J. T. TAYLOR, JR., ZACHARY TAYLOR and GORDON H. DENTON, and L. J. MOORE, and FLOYD D. WHITE, Third Party Defendants)

THIS CAUSE coming on to be heard and being heard by the undersigned Judge Presiding and a jury duly empaneled at the August 3, 1981, Civil Session of Superior Court for Craven County; and plaintiff being represented by T. Buie Costen, Special Deputy Attorney General, and by R. Bryant Wall, Assistant Attorney General; and defendants Alice S. Heath, Clifford Earl Heath, Donna Karen Heath (Minor) and Larry T. Heath being represented by Lamar Jones and Everette L. Wooten, Jr., Attorneys at Law; and Samuel

L. Whitehurst, Jr., Guardian Ad Litem for Donna Karen Heath (Minor), being represented by Lamar Jones and Everette L. Wooten, Jr., Attorneys at Law; and defendants J. T. Taylor, Jr., Zachary Taylor and Gordon H. Denton being represented by David S. Henderson and Nelson W. Taylor, III, Attorneys at Law; and defendant L. J. Moore being represented by Raymond E. Sumrell and James R. Sugg, Attorneys at Law;

AND, it appearing to the Court that all parties to this action are properly before the Court, and that the Court has jurisdiction of the parties and of the subject matter of this action;

AND, it appearing to the Court that by an Order previously entered in this action on October 8, 1979, it was determined that the issues of title

and damages in this action should be determined at separate trials with the issue of title to be first determined at the instant trial;

AND, plaintiff and all defendants and their respective counsel appearing at the call of the case for trial, and said counsel then representing to the Court that this action was in all respects ready for trial;

AND, plaintiff and defendants having entered into further stipulations as appear in the Order on Final Pre-Trial Conference and the Addendum thereto;

AND, plaintiff having presented evidence sufficient to locate the lands in controversy in this action and, thereby, invoke the presumption of title in plaintiff conferred by North Carolina General Statutes § 146-79;

AND defendants being required, thereby, to prove a good and sufficient title to said property in themselves in order to overcome such presumption;

DEFENDANTS HEATHS' EXCEPTION NO. 4

DEFENDANTS TAYLOR AND DENTON EXCEPTION NO. 12

DEFENDANT MOORE'S EXCEPTION NO. 4

AND, defendants Alice S. Heath, Clifford Earl Heath, Donna Karen Heath (Minor) and Larry T. Heath having presented evidence in support of their claim of title to the aforesaid lands and having rested;

AND, defendants J. T. Taylor, Jr., Zachary Taylor and Gordon H. Denton having presented evidence in support of their claim of title to the aforesaid lands and having rested;

AND, defendant L.J. Moore, having presented evidence in support of his claim of title to the aforesaid lands and having rested;

AND, plaintiff having moved for directed verdicts in its favor pursuant

to Rule 50(a), North Carolina Rules of Civil Procedure, at the close of evidence on behalf of defendants Alice S. Heath, Clifford Earl Heath, Donna Karen Heath (Minor) and Larry T. Heath, and again at the close of evidence on behalf of defendants J. T. Taylor, Jr., Zachary Taylor and Gordon H. Denton, and again at the close of evidence on behalf of defendant L. J. Moore, and having at that time renewed its former motions, all for the reason that all defendants failed to establish any good and sufficient title to the aforesaid lands in themselves as against plaintiff;

AND, the Court having considered the pleadings, stipulations, evidence, exhibits presented and arguments of counsel for plaintiff and defendants;

AND, the Court being of the opinion that the motions should be granted, and

that there is no just reason for delay in rendering this judgment adjudicating the ownership of title to and the right to possession of the lands involved in this action;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's motions for directed verdicts against all defendants are allowed.

DEFENDANT TAYLOR & DENTON'S EXCEPTION NO. 13

DEFENDANT MOORE'S EXCEPTION NO. 5.

2. Plaintiff, State of North Carolina, is the owner in fee simple of and entitled to possession of that certain tract or parcel of land located in Township No. 3, in Craven County, North Carolina, and more particularly described as follows:

BEGINNING at an iron pipe with marked trees as reference, said iron pipe being the northwestern corner of the property herein described and a corner in the

eastern line of the Wilson Hodges heirs' property, and said iron pipe having North Carolina Plane Coordinates of N 547,689.49 and E 2,482,976.92; running thence S 19° 16' 49" E 8,300.14 feet along the eastern property line of Wilson Hodges heirs' to a concrete monument, the southeastern corner of Wilson Hodges heirs' property, thence N 57° 21' 39" W 2,040.38 feet along the southern property line of Wilson Hodges heirs to a concrete monument, the northeastern corner of Weyerhaeuser property in Wilson Hodges heirs' south line; thence S 29° 08' 28" W 511.72 feet to an iron pipe, the northwestern corner of Halifax Paper Company property in Weyerhaeuser's eastern property line; thence S 57° 04' 15" E 3,252.07 feet along the northern line of Halifax Paper Company property to an iron pipe by a marked pine tree, the northeast corner of Halifax Paper Company property; thence S 28° 35' 21" W

1,838.18 feet along the eastern line of Halifax Paper Company property to an iron pipe, the southeastern corner of Halifax Paper Company property; thence N 57° 14' 49" W 3,250.77 feet along the southern line of Halifax Paper Company property to an iron pipe, a common corner for Halifax Paper Company and Weyerhaeuser; thence S 03° 14' 49" E 2,361.50 feet along the eastern line of Halifax Paper Company property to an iron pipe, the southeastern corner of Halifax Paper Company in the northern line of W. Guy Warmack property; thence along the northern line of W. Guy Warmack property the following calls: N 69° 10' 40" E 108.76 feet to an iron pin; N 69° 11' 11" E 204.00 feet to an iron pin; N 46° 46' 11" E 210.00 feet to an iron pin; S 83° 23' 49" E 369.00 feet to an iron pin; N 60° 51' 11" E 431.00 feet to an iron pin, the northeastern corner of W. Guy Warmack property and the northwestern corner of John T. Taylor property; thence along the northern line of John T. Taylor property the following

calls: N 60° 51' 11" E 310.00 feet to an iron pin; S 72° 18' 49" E 280.00 feet to an iron pin; S 66° 28' 49" E 583.00 feet to an iron pin; S 49° 53' 49" E 661.00 feet to a concrete monument, a corner for White, Jenkins and Lee property in the Northern line of John T. Taylor property; thence N 00° 25' 49" W 239.17 feet along the western line of White, Jenkins and Lee property to a railroad iron, the northwestern corner of White, Jenkins and Lee Property; thence S 66° 46' 24" E 2,397.66 feet along the northern line of White, Jenkins and Lee property to a railroad iron, a corner for White, Jenkins and Lee property; thence S 86° 23' 54" E 7,193.19 feet continuing along the northern line of White, Jenkins and Lee property to an iron pipe, the northeastern corner of White, Jenkins and Lee property in the western line of D. E. Mitchell property; thence N 08° 32' 18" E 2,092.94 feet along the western line of D. E. Mitchell property to an iron pipe; thence S 83° 51' 10" E 2,701.50

feet along the northern line of D. E. Mitchell property to an iron pipe, the southwest corner of land claimed by Bernice D. Bryan and Earl G. Mitchell; thence N 10° 20' 57" E 4,711.69 feet along the western line of land claimed by Bernice D. Bryan and Earl G. Mitchell to an iron pipe, the northwestern corner of land claimed by Bernice D. Bryan and Earl G. Mitchell in the southern line of property of Janie Estelle Wood; thence N 55° 20' 07" W 1,039.63 feet to an iron pin in southern line of Janie Estelle Wood property; thence continuing along the southern line of Janie Estelle Wood property the following calls: N 71° 01' 38" W 1,364.93 feet to an iron pin; thence N 71° 53' 46" W 1,073.08 feet to an iron pin; thence S 78° 19' 55" W 725.88 feet to an iron pin; thence S 65° 23' 36" W 666.48 feet to an iron pin; thence S 32° 45' 22" W 938.30 feet to an iron pin; thence N 44° 53' 22" W 2,055.85 feet to an iron pipe, the western most corner of Janie Estelle Wood property; thence N 27° 00' 00" E 352.08 feet along the western line of

Janie Estelle Wood property to an iron pipe in the southern line of International Paper Company property; thence N 49° 05' 29" W 438.36 feet along the southern line of International Paper Company property to an iron pipe, the southwestern corner of International Paper Company property and the southeastern corner of Bettie Russell Hazelwood property; thence N 59° 05' 24" W 3,460.12 feet along the southern line of Bettie Russell Hazelwood property to an iron pipe; thence N 71° 52' 05" W 835.76 feet along the southern line of Bettie Russell Hazelwood to an iron pipe; thence N 72° 03' 44" W 5,925.14 feet along the southern line of Bettie Russell Hazelwood property to an iron pipe in the eastern line of Wilson Hodges heirs' property, the point of beginning; and containing 2,705.0254 acres, as shown on survey by Robert T. Newcomb, Jr., dated April 15, 1981

DEFENDANTS HEATHS' EXCEPTION NO. 5

DEFENDANTS TAYLOR & DENTON'S EXCEPTION NO. 14

DEFENDANT MOORE'S EXCEPTION NO. 6

3. Plaintiff's title to the above-described tract or parcel of land is free and clear of any and all estates, rights, title, claims or interests of any of the parties defendants in this action.

DEFENDANTS TAYLOR & DENTON'S EXCEPTION NO. 15

DEFENDANT MOORE'S EXCEPTION NO. 7

4. Defendants J. T. Taylor, Jr. and Zachary Taylor, their agents, servants and employees, and any persons acting in concert with them, are hereby permanently enjoined from going upon the lands of the plaintiff hereinabove described for any purpose whatsoever, and are particularly permanently enjoined from cutting and removing any timber, shrubs, trees, lumber, or plants therefrom or otherwise trespassing thereupon in any manner whatsoever.

5. This cause shall be retained upon the docket of the Superior Court of Craven County for determination of any damages to which plaintiff may be entitled against the several defendants, or any of them, and for determination of plaintiff's motions for sanctions against some of the defendants on account of their refusal to admit those matters in plaintiff's Request for Admissions, as appear of record.

6. That the costs of this action shall be taxed by the Clerk against the several defendants.

BY CONSENT of all parties, this Judgment is signed out of Session, this 21st day of August, 1981.

s/ ROBERT D. ROUSE, JR. (ORIG.)
Judge Presiding and
Resident Superior Court Judge
of the 3rd Judicial District

APPEAL ENTRIES

To the Court's action in allowing plaintiff's motions for directed verdict as to their respective claims of title, and to the signing and entry of this Judgment, all defendants in apt time objected and excepted and gave notice of appeal to the North Carolina Court of Appeals. Defendants are allowed 100 days from and after the date of entry of this Judgment within which to prepare and serve case on appeal. Plaintiff is allowed 30 days thereafter within which to prepare and serve countercase or exceptions. Appeal bond is set at $200.00.

This 21st day of August, 1981.

s/ ROBERT D. ROUSE, JR. (Orig.)
Judge Presiding and Resident
Superior Court Judge of the
3rd Judicial District

NO. 823SC246

NORTH CAROLINA COURT OF APPEALS

Filed: 15 February 1983

STATE OF NORTH CAROLINA,
Plaintiff

v.

Craven County
No. 78CVS280

J. T. TAYLOR, JR., ZACHARY TAYLOR, and GORDON H. DENTON,
Defendants

and

L. J. MOORE, BOY'S RANCH FOUNDATION, ALICE S. HEATH, CLIFFORD EARL HEATH, and DONNA KAREN HEATH (Minor),
Additional Defendants

and

SAMUEL L. WHITEHURST, JR., Guardian Ad Litem for DONNA KAREN HEATH (Minor),
Additional Defendants

and

FLOYD D. WHITE,
Intervenor Defendant

and

LARRY T. HEATH,
Intervenor Defendant

and

L. J. MOORE,
Cross Complainant &
Third Party
Plaintiff

v.

STATE OF NORTH CAROLINA,
Plaintiff & Third
Party Defendant

and

J. T. TAYLOR, JR., ZACHARY
TAYLOR, and GORDON H. DENTON

and

ALICE S. HEATH, CLIFFORD EARL
HEATH, and DONNA KAREN HEATH
(Minor)

and

FLOYD D. WHITE,
Third Party
Defendants

Appeal by defendants from Rouse, Judge. Judgment entered 21 August 1981 in Superior Court, Craven County. Heard in the Court of Appeals 18 January 1983.

The State of North Carolina instituted this action to remove a cloud on title to certain land located in Craven County, to restrain trespass and timber removal, and to recover damages for timber wrongfully removed. The original defendants were J. T. Taylor, Jr., Zachary Taylor, and Gordon H. Denton (Taylor Group). L. J. Moore; Boy's Ranch Foundation; and Alice S. Heath, Clifford Earl Heath, and the minor Donna Karen Heath were joined as defendants upon motion by the Taylor Group. Later, Larry T. Heath was allowed to intervene; he aligned himself with the other Heaths in what will be referred to as the Heath Group. Intervenor Floyd White and Boy's Ranch Foundation were subsequently dismissed from the case.

Each group of defendants filed answers averring that they were the owners of the tract in question. Defendant

Moore's answer asserted a cross-claim against the plaintiff and the other defendants for trespass and for damages for timber removal.

The issues of title and damages were severed for separate trial. At trial before the jury on the issue of title, the court denied the motions of all defendants for a directed verdict and granted the State's motion for directed verdict at the close of all the evidence. Judgment was entered declaring the State to be the fee simple owner of the tract, consisting of 2,705.0254 acres.

Defendants Taylor Group, Heath Group and Moore appeal.

Attorney General Edmisten, by Special Deputy Attorney General T. Buie Costen, Assistant Attorney General Roy A. Giles, Jr., and Assistant Attorney General R. Bryant Wall, for the State.

Henderson & Baxter, P.A., by David S. Henderson for defendant-appellants

J. T. Taylor, Jr., Zachary Taylor, and Gordon H. Denton.

Broughton, Wilkins & Crampton, P.A., by J. Melville Broughton, Jr., for defendant-appellant L. J. Moore.

Jones and Wooten, by Everette L. Wooten, Jr. for defendant-appellants Alice S. Heath, Clifford Earl Heath, Larry T. Heath and Donna Karen Heath (minor).

ARNOLD, Judge.

G.S. 146-79 provides in pertinent part:

> In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

Relying upon the presumption created by G.S. 146-79, the State presented the testimony

of Robert T. Newcomb, a surveyor, who surveyed the land in question and described monuments he found and those he placed on the ground; he also testified concerning an aerial photograph he prepared and a survey map delineating the boundaries of the land. On cross-examination, he testified that the land was located within the boundaries of Land Grant No. 819. This evidence was sufficient to withstand defendants' motions for a directed verdict.

We hold that the defendants cannot succeed in their argument that the statutory presumption created by G.S. 146-97 is unconstitutional. The presumption is reasonable since title to all lands in North Carolina, except those previously granted by the Crown, originated from the State, and the State has ultimate title to the soil. Moore v. Byrd, 118 N.C. 688, 23 S.E. 968 (1896). In addition, "the statute does

not authorize a 'taking' of property. The presumption of title in the State lasts only until the rival claimant establishes valid title in himself." State v. Chadwick, 31 N.C. App. 398, 399, 229 S.E.2d 255, 256 (1976).

Each group of defendants offered evidence in support of their claims to title. Evidence presented by the Taylor Group which they contend established their chain of title was as follows:

1. Grant No. 819 from the State of North Carolina to David Allison.
2. David Allison's death without having disposed of the lands described in Grant No. 819.
3. Trust deed dated 10 December 1908 from the Allison heirs and State Board of Education to George H. Roberts, Trustee. This deed was allegedly executed in settlement of a dispute between the Allison heirs and the State.
4. Recorded deed from Florence E. Phipps (a purported Allison heir) to E. S.

English dated 1 January 1967.

5. Special Partition Proceeding No. N-1-232.

6. Recorded deed from Bernard B. Hollowell, Commissioner to E. S. English dated 17 November 1967.

7. Recorded deed from E. S. English to G. H. Denton dated 13 December 1967.

8. Recorded deed from G. H. Denton to Zachary Taylor dated 24 June 1968.

9. Adverse possession by the defendants Taylor and Denton.

The Taylors contend that the State was divested of title by virtue of the trust deed dated 10 December 1908; thereafter, the remaining deeds constituted color of title in defendants Taylor and Denton.

There arguments fail for several reasons. Chiefly, to claim title to land through adverse possession under color of title against the State, the party claiming

title must possess the land identified under known and visible lines and boundaries for 21 years as provided in G.S. 1-35. Since the Taylor Group first entered the land in 1968, clearly they have not possessed the land for the requisite period of time against the State.

Having failed to prove adverse possession against the State, the Taylors attempt to prove adverse possession under color of title against the trustee and reap the benefit of the shorter seven year possession period provided in G.S. 1-38. Again, the Taylors fail.

The description in the Phipps deed upon which the Taylors rely to claim title to the entire tract in question reads:

> Beginning at the George Pollock Patent beginning corner and runs west 1805 feet; then East 815 feet to a branch; then down said branch to the beginning, containing

15 1/2 acres.
And any and all other land and interest in land within Craven County, North Carolina, owned by David Allison at the time of his death . . . .

The Taylors cannot claim color of title to "any and all other land and interest in land . . . owned by David Allison" due to the insufficiency of the description and the lack of any reference to some source from which the deficiency in the description may be supplied. Carrow v. Davis, 248 N.C. 740, 105 S.E. 2d 60 (1958). Furthermore, the deed from English to Denton refers to the Hollowell deed, which conveys those lands particularly described in the Phipps deed. The words "particularly described," given their ordinary, natural and customary meaning, operated to convey only the 15 1/2 acre tract, and not the lands involved in this action.

Moreover, the Taylor Group presented the testimony of Bryant Wall, Assistant Attorney General, that he found a sheriff's deed to the governor of North Carolina dated 25 September 1801, conveying the lands covered by Grant No. 819 to the State.

Defendant Moore offered evidence of a chain of title based upon the 1908 trust deed common to the Taylor chain. However, the 1908 trust deed was ineffective to convey title since it lacked evidence of full execution, recordation or delivery. Moore made no claim of title by possession.

The Heath Group offered evidence in support of their claims to title through adverse possession.

Larry Heath testified that he bought land next to the lands in question in 1943 and allowed his cattle to roam onto the lands in question "a good long ways." He fenced the land he bought and part of the lands in

question but the fence did not go "all the way around." He cut timber along the edges of the property in question every year for 15 to 20 years, beginning in or about 1945 and again in 1965. He built some roads on the property after 1958 and gave the Forestry Service permission to run fire lanes across the property in the early 1960's. He paid taxes on 500 acres of the property, beginning with a payment for five years back taxes in 1958 and every year thereafter until 1969, when he and his brother Earl were restrained from entering the property by a temporary restraining order. After the temporary restraining order was lifted, he reentered the property and continued to graze livestock, cut timber and build roads. Others testified that they observed the Heath brothers carry on these activities on the property.

The Heath Group's evidence fails to make a case of simple adverse possession

without color of title under known and visible boundaries. Heath testified that someone else had used the property and built some roads. Heath also testified on cross-examination that he and his brother gave a deed for the property to a Mr. H. D. Dickerson of Durham County in 1965. He was getting "fed up with the property" because "it had been nothing but trouble for me, and the best thing for me to do was to get out of it." The Heaths' possession was, therefore, not continuous, uninterrupted, or exclusive.

Heath also testified that he and his brother Earl exchanged deeds for the property in 1958 in an attempt to create some title to the property. This exchange of deeds was fraudulent and made with full knowledge by each party thereto that neither had any title to the land. Larry Heath testified:

> Earl knew when he gave me his deed and I knew when I received it that

> Earl didn't own that property. Earl knew when I gave him my deed, and when he received it, that I didn't own the property described in that deed.

Exchange of those deeds cannot constitute color of title. In order for a deed to constitute color of title, the grantee must enter the land under the deed in good faith. Trust Co. v. Parker, 235 N.C. 326, 69 S.E. 2d 841 (1952). Good faith entry under the deed is lacking here.

Each group of defendants failed to present sufficient evidence in support of their claims to title. Therefore the granting of a directed verdict in favor of the State was proper.

We have reviewed the contentions of the Taylor Group that the trial court erroneously excluded certain testimony and find no prejudicial error.

The contention of the Heath Group that evidence of seven years adverse posession under color of title or twenty years adverse possession not under color of title is sufficient to rebut the presumption created by G.S. 146-79 is also without merit.

For the foregoing reasons, the judgment of the trial court is

Affirmed.

Judges HILL and WHICHARD concur.

No. 161P83 THREE-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA)	JUDGMENT DISMISSING
)	APPEAL ON MOTION OF
v)	ATTORNEY GENERAL
)	AND DENYING PETITION
J. T. TAYLOR, JR.,)	FOR DISCRETIONARY
ZACHARY TAYLOR, and)	REVIEW
GORDON H. DENTON,)	
Defendants, et al)	(823SC246)
)	
(For complete Title see)	
Attachment))	
)	

****

Upon consideration of the defendant's notice of appeal from the North Carolina Court of Appeals, filed in this matter pursuant to G.S. 7A-30, and Attorney General's motion to dismiss the appeal for lack of a substantial constitutional question, and upon consideration of defendant's petition for discretionary review of the decision of the North Carolina Court of Appeals, pursuant to G.S. 7A-31, the following order was

entered and is hereby certified to the North Carolina Court of Appeals: Attorney General's motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 31st day of May 1983.

s/ Frye, J.
For the Court"

Defendant's petition for discretionary review is

"Denied by order of the Court in conference, this the 31st day of May 1983.

s/ Frye, J.
For the Court"

Therefore, it is considered and adjudged further that defendant do pay the sum of Nine and no/100 Dollars ($9.00) and that execution issue therefor.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 2nd day of June 1983.

/s/
J. Gregory Wallace
Clerk of the Supreme Court

Copy to;

North Carolina Court of Appeals
Henderson & Baxter, Attorneys at Law
Nelson W. Taylor, III, Attorney at Law
Broughton, Wilkins & Webb, Attorneys at Law
Jones & Wooten, Attorneys at Law
T. Buie Costen, Special Deputy Attorney General
Roy A. Giles, Jr., Assistant Attorney General

STATE OF NORTH CAROLINA, Plaintiff

v

J. T. TAYLOR, JR., ZACHARY TAYLOR,
and GORDON H. DENTON, Defendants
and
L. J. MOORE, BOY'S RANCH FOUNDATION,
ALICE S. HEATH, CLIFFORD EARL HEATH, and
DONNA KAREN HEATH (Minor), Additional Defendants
and
SAMUEL L. WHITEHURST, JR., Guardian Ad Litem for
DONNA KAREN HEATH (Minor), Additional Defendants
and
FLOYD D. WHITE, Intervenor Defendant
and
LARRY T. HEATH, Intervenor Defendant
and
L. J. MOORE, Cross Complainant & Third Party
Plaintiff

v

STATE OF NORTH CAROLINA, Plaintiff & Third
Party Defendant
and
J. T. TAYLOR, JR., ZACHARY TAYLOR,
and GORDON H. DENTON,

and
ALICE S. HEATH, CLIFFORD EARL HEATH, and
DONNA KAREN HEATH (Minor),
and FLOYD D. WHITE, Third Party Defendants

SUPREME COURT OF NORTH CAROLINA

J. GREGORY WALLACE, CLERK
AREA CODE 919 733-3723 P.O. BOX 2170
RALEIGH, NORTH CAROLINA 27602

Mrs. Peggy N. Byrd
Chief Deputy Clerk

Mrs. Shaula A. Pennington

Mrs. Patricia J. Hadley
Deputy Clerks

September 28, 1983

Mr. David S. Henderson
Henderson & Baxter
P. O. Drawer U
New Bern, NC 28560

Mr. Nelson W. Taylor, III
Attorney at Law
P. O. Box 3489
Morehead City, NC 28557

Re: State v Taylor, & Denton
No. 161P83

Taylor

Dear Gentlemen:

Defendants' Motion for Reconsideration of Order Dismissing Appeal and Denying Petition for Discretionary Review has been filed

and the following order entered:

"Denied by order of the Court in conference this the 27th day of September 1983.

s/ Frye, J.
For the Court"

Very truly yours,

/s/
J. GREGORY WALLACE
Clerk for the Supreme Court

JGW/tjh

xc: Broughton, Wilkins & Webb, Attorneys at Law
Mr. T. Buie Costen, Special Deputy Attorney General
Mr. Roy A. Giles, Jr., Assistant Attorney General
Mr. R. Bryant Wall, Assistant Attorney General
Jones & Wooten, Attorneys at Law
Mr. Ralph White, Court Reporter
West Publishing Company

NO. 823SC246

NORTH CAROLINA COURT OF APPEALS

Three B District

STATE OF NORTH CAROLINA,	)	
	)	
Plaintiff-Appellee,	)	
	)	Craven County
v.	)	No. 78CVS280
	)	
J.T. TAYLOR, JR., et al.,	)	
	)	
Defendants-Appellants.	)	

NOTICE OF APPEAL TO THE
UNITED STATES SUPREME COURT

TO: (1) CLERK OF THE NORTH CAROLINA COURT OF APPEALS, Three B District, P.O. Box 2779, Raleigh, North Carolina 27611;

(2) EVERETTE L. WOOTEN, JR.
JONES & WOOTEN
Attorneys at Law
P.O. Box 3073
Kinston, North Carolina 28501
Attorney for Defendants-Appellants Larry T. Heath, Alice S. Heath, Clifford Earl Heath, Donna Karen Heath (a Minor-Guardian ad Litem Sam L. Whitehurst);

(3) T. BUIE COSTEN
SPECIAL DEPUTY ATTORNEY GENERAL
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Attorney for Plaintiff-Appellee
State of North Carolina.

The Supreme Court of North Carolina having denied the defendants' appeal and petition for discretionary review, you are hereby notified that an appeal of this case is being taken to the United States Supreme Court on or about December 24, 1983. You are further advised that:

1. the parties taking the appeal are the defendants J.T. Taylor, Jr., Zachary Taylor, Gordon H. Denton, and L.J. Moore;

2. the judgment appealed from was rendered on February 15, 1983, by the North Carolina Court of Appeals, Three B. District, in State v. Taylor, ___ N.C. App. ___, 300 S.E.2d 42 (1983);

3. the statute pursuant to which

this appeal is taken is 28 U.S.C. § 1257(2).

J.T. TAYLOR, JR., ZACHARY TAYLOR, GORDON H. DENTON, and L.J. MOORE,
Defendants-Appellants,

By: /s/
NELSON W. TAYLOR III
Attorney at Law
P.O. Box 3489
Morehead City,
North Carolina 28557
(919) 726-0001
Attorney for
Defendant-Appellants
J.T. TAYLOR, JR., ZACHARY TAYLOR, and GORDON H. DENTON

By: /s/
DAVID S. HENDERSON
HENDERSON & BAXTER, P.A.
607 Broad Street
P.O. Drawer U
New Bern,
North Carolina 28560
(919) 638-5792
Attorney for Defendant-Appellants
J.T. Taylor, Jr., Zachary Taylor, and Gordon H. Denton

By: /s/
J. MELVILLE BROUGHTON
BROUGHTON, WILKINS & CRAMPTON, P.A.

19th Floor; Century
Plaza Building
Fayetteville Street Mall
P.O. Box 2387
Raleigh, North Carolina27602
(919) 833-2752
Attorney for Defendant-
Appellant
L.J. Moore

Filed: December 19, 1983

NO. 823SC246

NORTH CAROLINA COURT OF APPEALS

Three B District

STATE OF NORTH CAROLINA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	Craven County
	)	No. 78CVS280
J.T. TAYLOR, JR., et al.,	)	
	)	
Defendants-Appellants	)	

CERTIFICATE OF SERVICE

This is to certify that I have this date duly served a copy of the foregoing NOTICE OF APPEAL upon the parties named below by depositing a copy in the United States Mail in a first-class postage paid envelope addressed to each of the parties at the following addresses:

(1) CLERK OF THE NORTH CAROLINA COURT OF APPEALS, Three B District,
P.O. Box 2779,
Raleigh, North Carolina 27611;

(2) EVERETTE L. WOOTEN, JR.
JONES & WOOTEN
Attorneys at Law
P.O. Box 3073
Kinston, North Carolina 28501
Attorney for Defendants-Appellants
Larry T. Heath, Alice S. Heath,
Clifford Earl Heath, Donna Karen
Heath (a Minor-Guardian ad Litem
Sam L. Whitehurst);

(3) T. BUIE COSTEN
SPECIAL DEPUTY ATTORNEY GENERAL
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Attorney for Plaintiff-Appellee
State of North Carolina.

This the 16th day of December 1983.

/s/
NELSON W. TAYLOR III
Attorney at Law
P.O. Box 3489
Morehead City,
North Carolina 28557
(919) 726-0001
Attorney for Defendant-
Appellants
J.T. Taylor, Jr., Zachary
Taylor, and Gordon H. Denton

/s/
J. MELVILLE BROUGHTON
BROUGHTON & WILKINS & CRAMPTO
19th Floor, Century Plaza
Building

Fayetteville Street Mall
P.O. Box 2387
Raleigh, North Carolina 27602
(919) 833-2752
Attorney for Defendant-
Appellant
L.J. Moore

No. 83-1041

IN THE

Supreme Court of the United States

October Term, 1983

J.T. TAYLOR, JR.,
ZACHARY TAYLOR, GORDON H. DENTON
and
L.J. MOORE,

Appellants,

vs.

STATE OF NORTH CAROLINA,

Appellee.

ON APPEAL FROM THE
NORTH CAROLINA COURT OF APPEALS
THREE B DIVISION

MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS APPEAL

RUFUS L. EDMISTEN
Attorney General of North Carolina

T. Buie Costen
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: (919) 733-7408
COUNSEL FOR APPELLEE

QUESTION PRESENTED

Does *N.C. Gen. Stat.* §146-79, which provides that in all suits involving any land to which the State of North Carolina is a party the title to such lands shall be presumed to be in the State until the other party shall show that he has a good and valid title to such lands in himself, violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, both on its face and as applied in this case?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... iv, v

MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS APPEAL 1

STATEMENT OF THE CASE 1

SUMMARY OF APPELLEE'S ARGUMENTS 3

REASONS FOR DISMISSING THE APPEAL 4

CONCLUSION 13

CERTIFICATE OF SERVICE 14

TABLE OF AUTHORITIES

TABLE OF CASES

Bandini Petroleum Co. v. Superior Court, 284 U.S. 8, 52 S. Ct. 103, 76 L. Ed. 136 (1931) 5

Block v. North Dakota, _____ U.S. _____, 103 S.Ct. 1811, 75 L.Ed. 2d 840 (1983) 5

Leary v. United States, 395 U.S. 6, 89 S. Ct. 1532, 23 L. Ed. 2d 57 (1969) 4, 5

Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S. Ct. 337, 55 L. Ed. 369 (1911) 8

Mobile, J. & K.C. Railroad v. Turnipseed, 219 U.S. 35, 31 S. Ct. 136, 55 L.Ed. 78 (1910) 5, 6

Mobley v. Griffin, 104 N.C. 112, 10 S.E. 142 (1889) 8, 9, 12

Robertson v. State Highway Commission, 148 Mont. 275, 420 P. 2d 21 (1966) 10

Short Beach Cottage Owners Improvement Association v. Town of Stratford, 154 Conn. 194, 224 A.2d 532 (1966) 10

Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L.Ed. 2d 551 (1972) 4, 5

State v. Brooks, 275 N.C. 175, 166 S.E. 2d 70 (1969) 9

State v. Brooks, 279 N.C. 45, 181 S.E. 2d 553 (1971) 8, 9

State v. Chadwick, 31 N.C. App. 398, 229 S.E. 2d 255 (1976) 8

State v. Phillips, 305 A. 2d 644 (Del. Ch. 1973), *aff'd*, 330 A.2d 136 (Del. 1974) 10

State v. Taylor, 60 N.C. App. 673, 300 S.E. 2d 42 (1983) 1, 2, 4, 11, 12

State v. West, 293 N.C. 18, 235 S.E. 2d 150 (1977) 6

Taylor v. Johnston, 289 N.C. 690, 224 S.E. 2d 567 (1976) 8, 9, 12

Tot v. United States, 319 U.S. 463 63 S. Ct. 1241, 87 L.Ed. 1519 (1943) 4, 5

Trustees of Schools of Township No. 8 v. Lilly, 373 Ill. 431, 26 N.E. 2d 489 (1940) 10

Ulster County Court v. Allen, 442 U.S. 140, 99 S. Ct. 2213, 60 L.Ed. 2d 777 (1979) 10

United States Department of Agriculture v. Murry, 413 U.S. 508, 93 S.Ct. 2832, 37 L. Ed. 2d 767 (1973) 4

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment to the United States Constitution ..... *passim*

STATUTE INVOLVED

N.C. Gen. Stat. § 146-79 ..... *passim*

MISCELLANEOUS TABLE

72 Am. Jur. 2d, *States, Territories, and Dependencies*, § 66 7

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

U.S. Const. amend. XIV, §1:

> No state shall ... deprive any person of life, liberty, or property, without due process of law. ...

N.C. Gen. Stat. § 146-79:

> In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

No. 83-1041

IN THE

Supreme Court of the United States

October Term, 1983

J.T. TAYLOR, JR.,
ZACHARY TAYLOR, GORDON H. DENTON
and
L.J. MOORE,

Appellants,

vs.

STATE OF NORTH CAROLINA,

Appellee.

MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS APPEAL

Appellee respectfully moves this Court to dismiss the appeal of Appellants for review of the decision of the North Carolina Court of Appeals, Three B Division, entered on February 15, 1983, in *State v. Taylor,* 60 N. C. App. 673, 300 S.E. 2d 42 (1983).

STATEMENT OF THE CASE

Appellee STATE OF NORTH CAROLINA (hereinafter "the State") commenced this civil action in the Craven County Superior Court against Appellants J.T. TAYLOR, JR., ZACHARY TAYLOR and GORDON H. DENTON (hereinafter "the Taylor Group") asserting causes of action to remove a cloud on the State's title to certain land in Craven County, North Carolina, and for other related relief. Other parties were joined as additional defendants, including Appellant L.J. MOORE (hereinafter "Moore").

Taylor Group filed answer alleging exclusive ownership of the land in question and raised, as a plea in bar of the

State's claim of title, the asserted unconstitutionality of *N.C. Gen Stat* § 146-79 under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The court denied this defense by order.

Moore filed answer alleging exclusive ownership of the land in question but did not plead any constitutional defense.

At trial on the issue of title, State's witness Robert T. Newcomb, a registered surveyor, testified he surveyed the land in question, identifying a survey map and an aerial photograph delineating boundaries of the land which were introduced as State exhibits. On cross-examination, he testified that the land was located within the exterior boundaries of Land Grant No. 819 issued by the State to David Allison in 1795.

Taylor Group presented evidence of adverse possession of the land in question beginning in the year 1968 and documentary evidence which they contended established their record chain of title. *State v. Taylor, supra* (675--676). In their evidence, the Taylor Group offered a witness, R. Bryant Wall, whose testimony identified four of the State's proposed documentary exhibits. He testified that these four deeds established a chain of title conveyances of Allison Land Grant No. 819, culminating in a tax deed dated September 25, 1801, from Stephen Harris, Sheriff of Craven County, to Benjamin Williams, then-governor of the State of North Carolina. Since the State was not required to introduce rebuttal evidence at trial, these deeds were not introduced.

Moore introduced documentary evidence of a chain of title based upon a purported deed common to the Taylor Group's chain of title.

At the close of defendants' evidence, the State's motion for directed verdicts against all defendants was allowed. The court accordingly entered judgment declaring the State to be owner of the land.

On appeal brought by all defendants, the North Carolina Court of Appeals held that the presumption of title in the State set forth in *N.C. Gen. Stat.* § 146-70 was constitutional and affirmed the holding of the trial court.

The Taylor Group and Moore appealed to the North Carolina Supreme Court, but that court dismissed the appeals.

Taylor Group and Moore now request this Court to review the constitutionality of *N.C. Gen. Stat.* § 146-79.

SUMMARY OF APPELLEE'S ARGUMENTS

N.C. Gen. Stat. § 146-79 provides in pertinent part:

> In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

Appellants argue the statute is unconstitutional *on its face* because the presumption it creates is patently unreasonable and amounts to a deprivation of property without due process. These arguments are unsound since, first, there is a rational connection between the fact presumed (*i.e.*, that title to the land in question is vested in the State) and the fact upon which this presumption is based (*ie.*, that the State is a

party to the litigation). Second, the statute does not deprive anyone of any property or title, but merely acts as a procedural device placing the burden of proof to show good and valid title. Finally, the statute does not deprive anyone of any notice, right to a hearing, or right to produce evidence; rather, it envisions a fair opportunity to show a good and valid title.

Appellants complain the statute is unconstitutional *as applied*, alleging its application in the face of evidence to the contrary is manifestly unreasonable. This overlooks evidence by their expert witness that although the State did part with title, title later returned to the State by valid recorded conveyances. It overlooks the invalidity of other evidence they introduced — namely, a purported 1908 trust deed. This document was determined by the North Carolina Court of Appeals to be inoperative to convey title "since it lacked evidence of full execution, recordation or delivery". *State v. Taylor, supra,* at 677. It also overlooks their inability to show any valid conveyance of the land from the State since the return of title into the State in 1801, and show any connected chain of title to themselves.

REASONS FOR DISMISSING THE APPEAL

Appellants cite six opinions of this Court for their assertion that *N.C. Gen. Stat.* § 146-79 is unconstitutional on its face. Of these, four appear to have no bearing on the present case: *United States Department of Agriculture v. Murry,* 413 U.S. 508, 93 S. Ct. 2832, 37 L.Ed. 2d 767 (1973); *Stanley v. Illinois,* 405 U.S. 645, 92 S. Ct. 1208, 31 L.Ed. 2d 551 (1972); *Leary v. United States,* 395 U.S. 6, 89 S. Ct. 1532, 23 L.Ed. 2d 57 (1969); and *Tot v. United States,* 319 U.S. 463, 63 S. Ct. 1241, 87 L.Ed. 1519 (1943).

The statute in *Murry, supra,* mandated ineligibility of households to receive foodstamps on the basis of a

conclusive, irrebuttable presumption contrary to fact and against which there was no avenue of redress. The law in *Stanley, supra,* presumed unwed fathers were unfit to rear their natural children and allowed a father to be deprived of his children without any opportunity for a hearing. *N.C. Gen. Stat.* § 146-79 does not deprive a party of any rights or title without due notice, right to hearing and the right to produce evidence. It envisions a full and fair opportunity to present all pertinent evidence.

Leary, supra and *Tot, supra,* involved presumptions in criminal statutes which were irrational and arbitrary. Also, different, more stringent due process standards apply to presumptions in criminal statutes.

None of their six authorities involved a land title lawsuit, nor have we found any. Land title law has always been left to the jurisdiction in which the land lies, even where a federal claim to title is asserted. See *Block v. North Dakota,* _____ U.S. _____, 103 S. Ct. 1811, 1822, 75 L.Ed 2d 840, 857, (1983) (FN 28).

Both *Mobile, J. & K.C. Railroad v. Turnipseed,* 219 U.S. 35, 31 S. Ct. 136, 55 L.Ed. 78 (1910) and *Bandini Petroleum Co. v. Superior Court,* 284 U.S. 8, 52 S. Ct. 103, 76 L.Ed. 136 (1931) *upheld* state statutes creating presumptions of fact. They provide instructive reasoning in support of constitutionality of our statute.

> *Mobile, supra,* misquoted in part by Appellants, says:
>
> > Legislation providing that proof of one fact shall constitute *prima facie* evidence of the main fact in issue is but to enact a rule of evidence, and quite within the general power of government ... .
> >
> > . . . .
> >
> > That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal

> protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a pruely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed.
>
> If a legislative provision not unreasonable in itself prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him.

Id., at 42-43. Our statute meets that test of this Court.

It merely embodies basic law of real property in the thirteen original states. Each state owns all land within it absent any showing to the contrary. It has the ultimate title to the soil. This title was acquired originally by one of the most ancient methods known to mankind, armed conquest. See *State v. West,* 293 N.C. 18, 28, 235 S.E. 2d 150 (1977), wherein our Justice Lake states:

> The Treaty of Paris simply recognized the established fact of history that North Carolina was, by reason of a successful revolution, a free and independent state, and no longer a British colony....As Justice Clifford said in *United States, Lyon et al v. Huckabee,* 16 Wall. 414, 21 L.Ed. 457 (1873); 'Complete conquest . . . carries with it all the rights of the former government, . . . the conqueror . . . becomes the absolute owner of

> the property conquered from the enemy . . . . His rights . . . extend to all the property and rights of the conquered State, including . . . real property.'

See also, 72 Am. Jur. 2d *States, Territories, and Dependencies,* § 66.

All private real property rights derive from the sovereign. Our statute merely reflects their natural origin by reasonably placing the burden upon the private party to show by some legally recognized method that title has devolved upon him.

Despite contentions that the statute places an unduly harsh burden, the contrary is true. But for the statute, how would the State demonstrate title in itself? Surely this Court would not require the State to introduce the Declaration of Independence, prove the surrender of Cornwallis at Yorktown, nor introduce the Treaty of Paris (1783). These would constitute the muniments of the State's title. Surely this Court would not require the State to then proceed to the next logical, but impossible, mode of producing evidence — *i.e.,* the proof of a negative proposition that the State has never parted with title. That would require the State to introduce and locate literally thousands of land grants and deeds heretofore issued and to demonstrate that none included the land in controversy.

Would this Court then require the State to prove no person had acquired title by adverse possession? It is perfectly reasonable to place the burden of proof upon the private litigant. He should have the most intimate knowledge of facts necessary to establish valid title.

This Court, when called upon to determine constitutionality, accepts the construction placed upon a state statute by the highest court of the state as part of the

statutory provision. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S. Ct. 337, 55 L.Ed. 369 (1911). Appellants cite several North Carolina cases. *Taylor v. Johnston*, 289 N.C. 690, 224 S.E. 2d 567 (1976); *State v. Brooks*, 279 N.C. 45, 181 S.E. 2d 553 (1971); and *State v. Chadwick*, 31 N.C. App. 398, 229 S.E. 2d 255 (1976). *State v. Chadwick, supra,* says: "The presumption of title in the State lasts only until the rival claimant establishes valid title in himself." *Id.*, at 399. The showing of a connected chain of title all the way back to the State is not the sole avenue available to establish a valid title. There are several other methods available. *Taylor v. Johnston, supra; Mobley v. Griffin*, 104 N.C. 112, 10 S.E. 142 (1889). The Court is referred to the *Mobley* landmark case. The methods include:

1. Without exhibiting any grant from the State, open, notorious, continuous adverse and unequivocal possession of the land in controversy, under color of title in himself and those under whom he claims, for twenty-one years before the action was brought.

2. Title out of the State by offering a grant to a stranger, without connecting himself with it, and the proof of open, notorious, continuous adverse possession, under color of title in himself and those under whom he claims, for seven years before the action was brought.

3. As against the State, possession under known and visible boundaries for thirty years, or as against individuals for twenty years before the action was brought.

These methods are not exclusive. Colorable title to land may be utilized to establish title against the State. The choice of method, or methods, lies exclusively within the party's control, subject only to the facts.

In *State v. Brooks, supra,* the defendants chose, at the first trial, to establish their purported title on the basis of adverse possession and failed. *State v. Brooks,* 275 N.C. 175, 166 S.E.2d 70 (1969). Upon retrial, defendants then chose to establish their title by connecting themselves to a grant from the State in controversy, and they again failed. In that case, there was *not* uncontroverted evidence of a grant of the lands in controversy from the State as Appellants would have this Court believe. Rather, our Supreme Court *assumed* for the purposes of decision that the land was a part of a prior grant, but in considering the evidence produced by defendants at trial—under the theory of title chosen by defendants—found defendants' title fatally defective due to absence of two necessary links in their chain. *State v. Brooks,* 279 N.C. 45, 57, 181 S.E.2d 553 (1971).

Likewise, in *Taylor v. Johnston, supra,* your Appellant J.T. TAYLOR, JR., by his own choosing, attempted to establish his title solely by connecting himself with a grant from the State. He was partially successful. He was able to show valid title to a one-fifth undivided interest. He failed to show valid title to the major portion because of a crucial break in his chain. His own case stands as positive proof of ability to successfully overcome the presumption in our statute.

Appellants provide this Court with a hypothetical fact situation (J.S., pp 14-15), in which they contend the statute would unreasonably and unconstitutionally deprive a private party of title without due process of law. In their hypothetical, party B *would* have ample opportunity to prove his title under the methods set forth in *Mobley, supra,* by proving record title in A and his title derived from adverse possession against A. This Court does not entertain questions of constitutionality under hypotheticals:

> Federal courts are courts of limited jurisdiction. They have the authority to adjudicate specific

> controversies between adverse litigants over which and over whom they have jurisdiction. In the exercise of that authority, they have a duty to decide constitutional questions when necessary to dispose of the litigation before them. But they have an equally strong duty to avoid constitutional issues that need not be resolved in order to determine the rights of the parties to the case under consideration.

Ulster County Court v. Allen, 442 U.S. 140, 154, 99 S.Ct. 2213, 60 L.Ed. 2d 777 (1979).

Appellants assert that other states do not apply a similar presumption and no undesirable results ensue. This begs the question. No state decision cited involved a presumptive statute. Each case cited is clearly not in point despite general statements in headnotes.

Robertson v. State Highway Commission, 148 Mont. 275, 420 P.2d 21 (1966) did not even involve land titles; it was an action to enforce a condemnation judgment.

Short Beach Cottage Owners Improvement Association v. Town of Stratford, 154 Conn. 194, 224 A.2d 532 (1966) did not even involve a sovereign state; it involved a town whose title derived from a sovereign state.

Trustees of Schools of Township No. 8 v. Lilly, 373 111. 431, 26 N.E.2d 489 (1940) turned on another evidentiary presumption (lost grant presumed from adverse possession of 78 years) which is not even necessary or required in North Carolina land title law.

State v. Phillips, 305 A.2d 644 (Del. Ch. 1973) *aff'd,* 330 A.2d 136 (Del. 1974) is interesting. It completely supports the rationality of our presumption. When reduced to its holding, it simply says that when a sovereign state establishes its title by the Treaty of Paris in 1783 (an indisputable historic fact) and the private party proves no

title, title is held to be in the sovereign state. Our statute simply recognizes the same indisputable historic fact and obviates the necessity of proving the Treaty of Paris.

Arguments that our statute is unconstitutional as applied center around two principal documents—1975 land grant from the State to David Allison and a purported 1908 trust deed from the State and alleged Allison heirs to a trustee.

With regard to the 1795 Land Grant to David Allison, it is true the State's surveyor testified on cross-examination that the land is located within the boundaries of the grant. However, Appellants offered R. Bryant Wall whose testimony included identification of four of the State's proposed documentary exhibits. He testified that these four deeds established a chain of conveyances of the grant land subsequent to its date, culminating in a deed to the Governor of the State of North Carolina. *State v. Taylor, supra,* at 677.

With regard to the purported 1908 trust deed, the North Carolina Court of Appeals did not fail to recognize this instrument as a muniment of title on the basis of its vague description. Rather, it was shown at trial and determined on appeal to be in operative "to convey title since it lacked evidence of full execution, recordation or delivery" (Id., at 677), elements essential for its validity under unchallenged North Carolina land laws. Appellants apparently proceed upon a premise that they have satisfied one of the methods of proving valid title by connecting themselves by chain of title to a grant from the State. This premise is patently unsound. At no point has anyone put forward any evidence or arguments connecting "Florence E. Phipps" (the purported grantor in their 1967 Phipps-to-English deed) as an heir of the "David Allison" who was the grantee of Land Grant No. 819. Likewise, no one has produced any credible evidence or arguments that the parties named in the

purported 1908 trust deed were connected to the "David Allison" who was the grantee of Land Grant No. 819.

They further complain the presumption places upon them an unduly harsh burden of proof because vague and uncertain descriptions of tracts of land are common in eighteen and nineteenth century deeds and generally do not withstand modern proof requirements. However, they point to no such ancient deed containing a vague description which is relied upon by them as a link in their chain. And, well they should not. One of the fatally defective links in their chain, and in fact the one which contains the type of vague description they complain of, is the 1968 Phipps-to-English deed. The only portion of its description which could possibly pertain to the land in controversy reads as follows:

> And any and all other land and interest in land within Craven County, North Carolina, owned by David Allison at the time of his death. . . .

Our Court of Appeals correctly held such a description too vague and insufficient to convey any land on the basis of established precedent. *Id.*, at 676-677.

Thus, it is readily apparent that the so-called chains of title to both the Taylor Group and Moore contain links so fatally defective that they cannot even be relied upon as *color of title* (*Id.*, at 677), much less to establish a *connected chain of title. Taylor v. Johnston, supra; Mobley v. Griffin, supra.*

Since the State was not required to introduce rebuttal evidence at trial, the 1801 tax deed reconveying the lands in Grant No. 819 to the State was not formally introduced into evidence. However, its existence is a fact proven by Appellant's own uncontroverted testimony. All that would be required for the State to prevail on the merits at a retrial of this case would be the introduction of that deed by the

State. Therefore, what Appellants are, in effect, asking this Court to do is to engage in an academic discussion of contitutional principles of law in a case which will not be affected in any way by the ruling of this Court on the record before the Court.

Consequently, *N.C. Gen. Stat.* §146-79 is not unconstitutional as applied in this case, since consideration of all pertinent evidence shows title to the land in controversy to be validly vested in the State. On the other hand, Appellants have not in any way mounted sufficient credible evidence to establish good and valid title in themselves under any recognized method of establishment of land titles in the State of North Carolina.

CONCLUSION

As shown hereinabove, *N.C. General Stat.* §146-79 is constitutional on its face under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The statute is likewise constitutional as applied in this case. Consequently, this Honorable Court should dismiss this appeal since:

(1) It does not present any substantial federal questions;

(2) The judgment below rests upon an adequate non-federal basis; and

(3) This Court is asked to review based upon hypothetical factual situations not present in the case.

RUFUS L. EDMISTEN
Attorney General

T. Buie Costen
Special Deputy Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three (3) copies of the foregoing MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS APPEAL were served upon counsel of record for appellants and upon counsel for each other party separately represented in this appeal by depositing said copies in a United States post office, with the first-class postage prepaid, addressed to such counsel as follows:

(1) Mr. William Woodward Webb
Broughton, Wilkins & Webb, P.A.
Attorneys at Law
Post Office Box 2387
Raleigh, North Carolina 27602
Counsel of Record for Appellants

(2) Mr. David S. Henderson
Henderson & Baxter
Attorneys at Law
Post Office Drawer U
New Bern, North Carolina 28560
Counsel for Appellants J.T. Taylor, Jr.,
Zachary Taylor, and Gordon H. Denton

(3) Mr. Nelson W. Taylor, III
Attorney at Law
Post Office Box 489
Morehead City, North Carolina 28557
Counsel for Appellants J.T. Taylor, Jr.,
Zachary Taylor, and Gordon H. Denton

This the 9th day of February, 1984.

RUFUS L. EDMISTEN
Attorney General

T. Buie Costen
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: (919) 733-7408
ATTORNEYS FOR APPELLEE